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File No. O.L.R.C. Bom Pt. II 47

Legal **DEPARTMENT**

A **BRANCH**

Subject:—

Opinions under the Bombay Land Revenue Code, 1879.

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(For previous papers pl. see pt. I)

207-A

CONTENTS.

Legal Department File No. O. L.R.C. Brm./47 pt.II

Sr. No.	Compilation No.	Subject	Pages.
		Opinions under the Bombay Land Revenue Code,1879.	
1.	O.No. 6907 5/7/1947/	Bombay Land Revenue Rules , 1921, Chapter XVII	
	O.No. 11355 27/11/1947/	The Bombay Cooperative Societies Act,1925,Section 39A(1) Restoration of forfeited agricultural lands to the original holders or their heirs. Restoration of lands purchased by Government on nominal bids for recovering the dues of Government or cooperative Societies.	1-4
2.	O.No.11010 18/11/1947/	Section 67. Revision of non-agricultural assessment.	5-6
3.	O.No.10616 6/11/1947/	Cancellation at agreement	7-8
4.	O.No.11656 5/12/1947/	Section 37(1) & (2), Disposal at deserted village sites.	9-12
5.	O.No.13403 24/12/1947/	Section 62 The Indian Contract Act, section 65. Indian Limitation Act, 1908, Article 97 Refund of rent and occupancy price.	13-14.
6.	O.No.2440 13/3/1947/.	Sections 48(2) ,52 and 214 (2)(b) The land Revenue Rules 1921, rule 80A Revision of non-agricultural assessment whether in view at the High Court decision in Second Appeal No.1042 of 1943 any amendment to the Act, is necessary	15-18.
	O.Spc. 4614 6/5/1947/		

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8/5/1956/

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Office of the R.L.A.

The proposal (A) at p. 21 ante which relates to resto ing the forfeited agricultural lands to the original holders or their heirs, being in no way inconsistent with the provisions of~~x~~ rules contained in Chapter XVII of the Bombay Land Revenue Rules , 1921 , is face fro- any legal objection.

The proposal (B) at p. 21 ante relates to restoring lands purchased by Government on nominal bids for recovering the arrears of Government or Co-operative Sicieties. Section 59(A)(1) of the Bombay Co- operative Societies. Act, 1925, provides for he transfer to the Society of th defaulter's property or any part thereof which cannot be sold for want of buyers. Consequently the re- may not be any cases of the lands being purchased by Government on nominal bids for recovering the aprrears of Co-operative Sicieties; and if this is correct this proposal will have to be retricted to elands p rchased by Government on nominal bids for recovering the arrears of Government only.

R.D. proposes that these lands should be restored provided tha original holders or their heirs (i) apply within 12 years of the date of purchase for restroration on the ground that the purchase was illegal or (ii) in cases where the period of 12 years elapsed, subject to certain conditions . As regards lands (i) it is proposed that if such lands are already sold to third parties by Government and if the original holders or thier heirs have applied for restrration within 12 years the Collector should arrive at a compromise with claimants by paying over to them the sale price realised by Government and then take separate proceedings for recovering thedues for which the lands were originally pur to sale.

This propcaal appears reasonable and feasible . If

the legal position about the purchase of these lands by Government on nominal olds is properly explained to the third parties who have subsequently purchased these lands from Government they may agree to give up lands on payment of their money rather than risk litigation. If, however, they do not agree the original holders or their heirs who have applied for restoration may go to Court if advised.

With regards to lands (ii) i.e. lands for restroring which applications have been made after 12 years, the U.S. , R.D. observes :

> "It is perhaps not necessary to recognize the claim Of the original holders after the expiry of the period of limitation, because the claim is legally extinguished and it may give rise to proper and improper claims resulting in overdrawn correspondence in Mamlatdars and P.O.'s offices etc."

Apart from the administrative inconvenience the claims made for restoration of lands after the lapse of 12 years would be barred, but if the lands are still in possession of Government equity requires that claims for restoring them should be treated on a par with those made within 12 years. But if these lands are in possession of third parties Government would be helpless.

O.C. Id/- D.V.K.

Remembrancer of Legal Affairs.

U.R. to R.D. No. 6907 , dated the 5th July 1947.

V.VK. 8/5/56/

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R.I.No. 12484
~~Dated 18/Oct. 1947.~~
14/15th Oct. 1947.

Submitted.

2. Please see R.L.A.'s opinion No 6907, dated the 5th July 1947. H.M. (R.D.) to whom the R.L.A.'s opinion was shown observes :-
"With reference to R.L.A.'s remarks at A on p.27 I may note that sec. 59A(1) of the Bombay Cooperative Societies Act came ~~xxxx~~some years after permission was granted to cooperative societies to purchase lands for nominal bids. Reference to the position on B of the draft G.R. is necessary. The G.R. ~~xxxx~~ should issue as drafted."

3. The rdaft G.R. as finally approved by the H.M. as at p.41 ante was issued. R.D. has shown the papers to the R.L.A. for information with reference to H. M. F.D.'s minute on p. 31 ante.

4. The position stated by H.M. F.D. at p.31 ante appears to be correct. Section ~~50(A)~~ 59A(1) of the Bombay Cooperative Societies Act, 1925, providing for the transfer to the society of the defaulter's property or any part thereof which cannot be sold for want of buyers was added by sec. 4 of Bombay Act 22 of 1935. Consequently, there might be cases of lands purchased by Government on nominal bids for re covering the arrears of cooperative societies. Reference to coperative societies, as stated in para 1(B) at p. 41 of the G.R. ~~xxx~~ appears to be necessary.
The papers may be " seen and returned . The view taken by the H.M. F.D. in his note at p.31 ante is correct."

P.S. Nadkarni
26/11/

A.A.S.

The view of H.M. (F) is correct.
The R.D. no. 7804/39 dt. 28/8/47/ ~~dt.~~ covers ~~covers~~ the point raised by H.M.(F) and no further action is necessary. The papers may be "Seen and returned"

R.L.A./- P.M.L. dt/-26/11.

U/I - E.P.B. 26/11. A.L.R. 4R 26/11.

U.R.to R.D. No.11355 dt. 27/11/1947/ ~~V.VE. 8/3/56/~~

Revision of non-agricultural assessment.

Bombay Land Revenue Code, 1879.

It appears from he report of the Commissioner, Northern Division at Page 75 that certain agreements under section 67 of the Land Revenue Code have been executed, fixing the term of the non-agricultural assessment . These terms having not expired, the question raised for the consideration of the R.L.A. is whether the non-agricultural assessments fixed under those agreements can be revised by making an endorsement on those agreements to the following effect :-

> " The assessment has been revised from Rs. _____ to Rs. _____ and the land is being continued for a further period of 50 years from _____ 1947."

In second appeal No. 1042-43 , the High Court held that rule 80A on which Government relied for revision of ~~xxxx~~ the non-agricultural assessment, was not valid inasmuch as that rule was not referable to any provision in the Bombay Land Revenue Code, 1879. It is therefore, apparant that Government has no power to revise the non-agricultural assessment and the question of amending the Bombay Land Revenue Code for the purpose of taking such power is under the consideration of Government. No doubt, the agreements referred to by the Commissioner expressly provide for the revision of the non-agricultural assessment after the expiry of the term specified therein, but those agreements are made under section 67 of the Land Revenue Code which provides :-

> "Nothing in the last 2 preceding sections shall prevent the granting of permission aforesaid on such terms or conditions as may be prescribed by the Collector subject to rules made in this behalf by the Provincial Government."

As stated above, rule 80A of the Land Revenue Rules has

been held invalid. When Government has no power to revise the non-agricultural assessment once fixed, it would not be legally in order to make a provision in the agreement taking such power. The levy of assessment has to be made in accordance with the provisions of the Bombay Land Revenue Code and the rules made thereunder. The express provision made in the agreements for revising the non-agricultural assessment would not be referable to any of the provisions of the Bombay Land Revenue Code and the rules thereunder, and as such would be ultra-vires. Consequently it could not be legally feasible to revise the non-agricultural assessment notwithstanding the expiry of the terms as provided in the agreements unless and untol Government takes power to revise non- agricultural assessments by amending the Bombay Land Revenue Code.

QC. Id/- R.M.L.
dt/-18/11

Remembrancer of Legal Affairs.

U.R. to R.D. No. 11010 , dated the 18th November 1947.

V.VK.
8/5/56/

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Office of the R. I.A.

Cancellation of agreement.

Bombay Land Revenue Code, 1879.

Obviously the old agreement cannot be cancelled simply because at the time of its execution the revenue authorities mistakenly assumed that he plot was situated in the zone where the rate of assessment was Rs7-3-0 per 100 square yards. The agreement is binding on both parties and cannot be cancelled before the expiry of the period of guarantee unless there is a breach of any of its terms which is not alleged in this case. The case is covered by the recent decisions of the Bombay High Court in 44 Bom. L.R. 403 and 46 Bom. L. R. 413.

With regard to paragraph 2 of the Dy. Secy R.D.'s note of 15-7-1947 it seems extremely unlikely that the appellant would execute a new sanad agreeing to the rate of Rs 30 per 100 square yards after filing an appeal challenging the order in that behalf . If she has executed any such sanad, it may be forwarded to the Remembrancer of Legal Affairs for perusal.

~~J.C.~~ Sd/- P.M.L.
dt/-5/11/47/
Remembrancer of Legal Affairs.

U. R. to R.D. No. 10616 , dated the 6th November 1947.

V.VK.
~~5/5/56/~~

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Office of theR.L.A.

Disposal of deserted villa e sites.

Bombay Land Revenue Code, 1:79.

It appears that about twenty - five years ago, an epidemic of plague broke out in the village of Parwapur in Kalghatgi taluka of Dharwar District and took a heavy toll of life. The survivors, however, migrated to the neighbouring villages of Sangedevarkop and Madkihommihallli and since then the deserted village has remained uninhabited . In 1939 one Abdulsah applied for the grant of the deserted village site for cultivation. The Circle Inspector reported that the site in question did not completely vest in Government but there was nothing on record to show which part was Government land and which part privately owned. Since the Panchas of this village objected to the grant, the proposal was dropped. In 1943, one Rev. A.N. Leyton applied for the grant of the said land for cultivation. The Mamlatdar reported that although the gaothan was deserted, there were several people in the nearby villages who still claimed several plots as their own and protested against the grant on the ground that they intended to reoccupy the gaothan. He, however, added that the village was unsurve yed and it was not, therefore , possible to state which land vested in Government and which did not. The District Inspector of Land Records reported that there were several private owners who actually made 'vahivat' of the land and that it would not be possible to measure the land unless the rights of private parties were first extinguished . Relying on the comments in Gupte's Land Revenue Code that the abandoned village sites vest in Government, the Collector decided that the gaothan should be taken

possession and disposed of as Government waste land and if any individual preferred his claim to any portion of it, the claim should be inquired into and decided in accordance with the procedure laid down in section 37(2) of the Land Revenue Code. Accordingly the possession of the land was taken on 24.2.1945 without any obstruction from any one. Thereafter the land was sold to one Sangappa who was the highest bidder. The villagers of the abandoned village dispuring the auction sale. The questions raised by R.D. are :- (1) whether the statement made at page 143 of Gupte's Land Revenue Code on the basis of C.R.R.D. No. 8413 of 27/5/1907/ that abandoned village sites vest in Government as waste land is a correct statement of law , and if not, (2) whether the sale should be set aside or the parties parties concerned should be left to establish their own claim to the lands.

Under section 37 sub section (1)of theLand Revenue Code all lands, wherever situated, which are not the property of individuals, or of aggregates of persons legally capable of holding property vest in Government . The statement made at page 143 of Gupte's Land Revenue Code that abandoned village sites vest in Government as waste land is based on G.R. R.D. No.8413 of 1907 which in turn was issued on thebasis of the brief prepared by the R.L.A. for the defence of the suit in Original Suit No. of 1906 filed in the District Court of Dhulia. On the particular facts of that case, the R.L.A. suggested in the brief that the suit should be defended on the ground "that the plaintiff is not entitled as

owner of the plot but that the plot is a part of the old village site which was abandoned and was a, under section 37 of the Bombay Land Revenue Code, in Government By G.R.,R.D. No. 5295, dated the 1st June 1911 ,Collectors have been invested with powers to sanction appropriation of disused village sites for agricultural purposes under section 37 of the Bombay Land Revenue Code. It is apparent from this that the disused abandoned village sites vests in Government is based on the provisions of section 37(1) of the Bombay Land Revenue Code. Sub-section (2) of that section prescribes an enquiry

even when any property is claimed by or on behalf of tehe Crown. Consequently, no disused village site can vest in Government under sectio 37(1) unless ~~xitxxxxxttxxxxx~~ an enquiry is held under sub-section (2) and Government claim is established.

It is apparent from the reports made by the Circle Inspector in 1939 and particularly by the Mamlatdar in 1943 that the original owners of several plots in gaothan in the present cases till asserted their claims. It is doubtful whether the adverse possession of the Crown can be said to have commenced before 24.2.1945. when possession was first taken; for prior to that date Government tacitly acknowledged the force of the claim made by the original owners and refused to make a grant; and there was no overt act of adverse possession by Government. The plea of adverse possession is, therefore, not likely to be helpful to Government. The Collector's order recognises the necessity of holding an inquiry under section 37(2) of the Bombay Land Revenue Code . An enquiry is necessary even though no claim was in terms made by any person as against Government ; for section 37(2) prescribes an inquiry even when any property is claimed by or on behalf

of the Crown as it was in this case. The Collector's papers do not show that any such inquiry was held and an order of possession was passed as a result of the enquiry. I think, therefore, that the order of taking possession was illegal and so too the subsequent order of disposal. Steps may therefore be taken to set aside the order of sale and thereafter to hold an inquiry under section 37(2) of the Bombay Land Revenue Code.

~~S.C.~~ Id/-P.M.L.
dt/-4/12/
Remembrancer of Legal Affairs.

U.R. to R.D. No. 11656, dated the 5th December 1947.

V.VK.
8/5/56/

4C.

Refund of rent and occupancy price.

Land Revenue Code, 1879, and Indian Contract Act, 1872, and Indian Limitation Act, 1908.

Office of the A.L.A.

The question of rent does not present any difficulty. If the lessee was in possession of the lands upto 11th April 1939 he is not entitled to claim any ~~xxxxx~~ refund from Government . The dispute would primarily be between the Khot and Government. In any event, a claim by the lessee for refund of rent would now be time-barred under Article 62.

The price recovered by the Government from ~~xx~~ the lessee under section 62 of the Land Revenue Code was for the occupancy for a period of 99 years commencing from 1st August 1912. The grant having failed before the expiry of the period of contract, Government would be liable to make a proportionate refund to the ~~lessee~~ lessee on the principle enacted in section 65 of the Indian Contract Act. However, any suit now filed by the lessee for a refund of the whole or proportionate amount of the occupancy price would be time-barred under Article 97 of the Limitation Act. That Article applies to suits for money paid upon an existing consideration which afterwards fails. The cause of action for such a suit would be the date on which the High Court finally decided that the land did not belong to Government or in the alternative the date on which the lessee was evicted. In either case, the threatened suit is now time-barred.

O.C. 13/-P.M.L.
dt/- 23/12/
Remembrancer of Legal Affairs.

U.R. & R.D. No. 13406 , dated the 24 December 1947.

V.VK. 8/5/1956 4C.

Office of the R.L.A.

Section 48(2) of the Land Revenue Code, 1879 provides:

> "Where land assessed for use for any purpose is used for any other purpose, the assessment fixed under the provisions of this Act upon such land shall, notwithstanding that the term for which such assessment may have been fixed has not expired, be liable to be altered and fixed at a different rate by such authority and subject to such rules as the Provincial Government may prescribe in this behalf".

This provision does not provide for the revision of non-agricultural assessment which is levied on land, assessed to agriculture, being used for non-agriculture.

Section 52 provides :

> "On all lands which are not wholly exempt from the payment of land revenue and on which the assessment has not been fixed under the provisions of Ch.VIIIA the assessment of the amount to be paid as land revenue, shall, subject to rules made in this behalf under section 214, be fixed at the discretion of the Collector for such period as he may be authorised to prescribe and the amounts due according to such assessment shall be levied on all lands."

Under this provision non-agricultural assessment can be levied on all lands which are not subjected to agricultural assessment under Ch. VIIIA; but it does not provide for the revision from time to time of non-agricultural assessment thus fixed.

Under clause (b) of section 214(2) rules can be framed for regulating the assessment of land to the land revenue and the alteration and revision of such assessment and the recovery of land revenue. There is no provision in the Bombay Land Revenue Code empowering Government to revise the non-agricultural assessment after it is once fixed. In the absence of such power, the question of making rules for regulating the revision of non-agricultural assessment does not arise. Consequently the view taken by the High Court that rule 80A is ultra vires is correct. It appears, therefore, necessary to amend the Bombay Land Revenue Code for the purpose.

Sd/-D.V.M.

~~D.F.~~ Remembrancer of Legal Affairs

U.O.R. to R.D. No. 2440, dated the 13th March 1947.

V.VK.
6/5/56

Office of the R.L.A.

Rule 80A was enacted with a view to supplying the lacuna which was exposed by the Ahmedabad Ginning factory case. In the R.L.A.'s opinion of 27th June 1938 it was held that such rule could be made under section 45 read with section 48 and ~~section 48 and~~ section 214(2)(b) of the Bombay Land Revenue Code. This argument was in fact placed before the High Court in a cond appeal No.1042 of 1946 but it did not find favour with Their Lordships. The Court took the view that rule 80A ~~xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx~~ could be valid , if at all, not under section 45 or section 48 but under section 102 read with section 105 . Rule 80A was framed on 31st August 1938.The amending Act, No. XX of 1939 came into force subsequently on 19th October 1939 and in the High Court's opinion it is the repeal of section 102 and the amendment of section 105 that has invalidated rule 80A . It is true that section 52 after its amendment by Act XX of ~~1939~~ 1937 provides for the levy of non-agricultural assessment on all lands which are not subjected to agricultural assessment under Chapter VIIIA; but it does not provide for the revision from time to time of non-agricultural assessment thus fixed. As we do not want to challenge the view taken by the High Court, there is no other alternative but to amend the Bombay Land Revenue Code as suggested by the High Court.

2. As regards 'B' of the Secretary,R .D.'s note at p.9 ante, it is submitted with respect that the High Court judgment does refer to section 45 of the Land Revenue Code. (Please see 'A' on the page flagged J below.)

O.C. S/-P.M.L.
dt/-5/5

Remembrancer of Legal Affairs.

U.R. to R.D. No. 4614 dated the 6th May 1947.

V.VK. 8/5/1956

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